

LICENCES

Licensing of Crown land—guidelines

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More information

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Overview

These guidelines support the Licensing of Crown Land Policy. This document provides further information on the process used by the NSW Department of Industry—Lands & Water (the department) to ensure that licences that are granted are appropriate, consistent and transparent.

Licences to occupy and use Crown land

A licence is an authority granted by the department under the *Crown Land Management Act 2016*, which gives permission to occupy and use Crown land for a specified purpose and term.

A licence does not provide for exclusive use and possession of the land. While licensees are permitted to use the land for the specified purpose, the land may also need to remain available for public use.

The department issues licences to individuals, companies and community organisations for a number of purposes including, but not limited to:

- waterfront structures, such as jetties, boat ramps and slipways
- grazing
- cultivation
- water supply and access
- short-term and temporary activities such as event, environment research or site investigations*
- extractive industry operations*

*Refer to the department's website for more information on these types of licences.

Where substantial development is proposed that involves significant capital investment, a lease may be more appropriate.

Licences not covered by these guidelines

These guidelines do **not** refer to:

- domestic waterfront licences
- communications licences
- extractive industry licences
- short-term licences
- licences issued by Crown land managers.

Please refer to the department's website for further information about these specific types of licences.

Assistance

For further information please contact:

Licences Team

Phone: 1300 886 235 (Option 3, Option 2)

E-mail: licences@crowmland.nsw.gov.au

Applying for a licence

Licences may be granted over reserved, dedicated or unreserved Crown land for a range of purposes. In addition, licences may also be granted over Crown roads.

To apply for a licence over Crown land, please complete the appropriate licence application form, available from the [department's website](#). Submit the application form with all relevant supporting documentation, as detailed on the application form.

Additional supporting documentation may also be required, depending on the circumstance. This may include the following:

- copy of a current company search, no less than 12 months old (mandatory where the applicant is a company)
- Certificate of Incorporation (mandatory where the applicant is an incorporated entity)
- copy of authorised signatories (where the applicant is an entity, excluding a company)
- completed Land Management Strategy (mandatory where the purpose of the licence is grazing)
- copy of death certificate, will and probate (if granted)
- copy of an approved Development Application or relevant planning approval (mandatory prior to the issue of a licence where development is proposed).

Please submit applications and supporting documentation by posting them to PO Box 2155, Dangar NSW 2309.

An application fee is payable when submitting an application for a Crown land licence. Current fees are detailed on the appropriate licence application form and are also available on the department's website.

You may pay an application fee by the following methods:

- cheque made payable to NSW Department of Industry
- money order made payable to NSW Department of Industry.

Licence assessment

The Licences Team processes applications and the department's regional offices assess them. Licence applications are assessed to ensure that the usage or occupation applied for is permissible and meets the department's requirements. The assessment process:

- ensures the usage or occupation applied for is permissible under the *Crown Land Management Act 2016* (CLMA)
- establishes the conditions that will be applied to the licence
- establishes the term of the licence
- ensures responsible use and management of Crown land
- ensures the process used to grant licences is fair and transparent
- determines the appropriate rent to be associated with the licence.

Each application received is considered on its merits, taking into account:

- compliance with the CLMA, related policies, guidelines and other related legislation
- land capability
- current and future use of the land
- native title
- Aboriginal land claims

- development consent (and other consents under the *Environmental Planning & Assessment Act 1979*)
- direct negotiation and public competition
- the public interest
- the outcome of engagement (if required) under the *Community Engagement Strategy*.

Please note that the above is to be taken as a guide as to what is usually reviewed when processing a licence application. The department reserves the right to base assessment on matters not included in the above list.

Land capability

From time to time, land may not be suitable for particular uses. For example, grazing may not be suitable on environmentally sensitive land. The department will consider the capability of the land when assessing a licence application. A site inspection may also be undertaken to assist in determining the capability and condition of the land.

Native title

Native title is the name given to the traditional ownership of land and waters that have always belonged to Aboriginal people according to their traditions, laws and customs. The *Native Title Act 1993* sets out how native title rights are recognised and protected.

When assessing licence applications, the department considers whether the proposed activity affects native title, where it exists. Where native title is affected and the proposed activity cannot be validated under the *Native Title Act 1993*, a licence application will be refused.

In some instances additional fees may apply where further native title searching is required. The department will advise the applicant if additional fees apply.

Aboriginal land claims

The *Aboriginal Land Rights Act 1983* recognises that land in New South Wales was traditionally owned and occupied by Aboriginal people, and is of spiritual, social, cultural and economic importance to the Aboriginal people. Under the *Aboriginal Land Rights Act 1983*, Aboriginal Land Councils may lodge a claim over Crown land.

If a licence application is received for land that is the subject of an undetermined Aboriginal land claim, the department will generally refuse the licence application if the proposed purpose of the licence:

- prevents the land being transferred to an Aboriginal Land Council in the event the claim is granted
- impacts or changes the physical condition of the land.

Where the proposed purpose of a licence will impact or change the physical condition of the land, the application would only be considered if the applicant has obtained a letter of consent from the claimant Aboriginal Land Council or the Aboriginal Land Council has withdrawn or amended the claim. While a request to a claimant Aboriginal Land Council can be made, the claimant Aboriginal Land Council is under no obligation to grant such a request and may prefer to have the claim fully investigated.

Development consent

In New South Wales, particular activities where development is proposed must comply with the *Environmental Planning & Assessment Act 1979*. Generally, proposed development will require development consent under Part 4 of the *Environmental Planning & Assessment Act 1979*. This extends to activities upon Crown land, and people applying for a licence over Crown land must have the appropriate development consent (such as a development application or building certificate) before applying for a licence. As a part of this process, landowner's consent must be obtained from the department.

Once development consent has been obtained (if it is required) the department will be able to proceed with the assessment of a licence application.

Alternatively, assessment of the proposed development must be undertaken by the department. In these instances, the department may request a licence applicant provide a Review of Environmental Factors (REF) to enable the department to undertake a Part 5 assessment under the *Environmental Planning & Assessment Act 1979*.

In limited cases, approval for proposed state significant development may fall under Part 3 of the *Environmental Planning & Assessment Act 1979*.

Direct negotiations and competitive processes

To facilitate a fair and transparent application process, in considering a licence application, the department ascertains whether it is appropriate to proceed via a competitive process or through direct negotiation with the applicant. Given the nature of licences, a licence may be granted by direct negotiation where it meets one of the following categories:

- where a delay in the granting of a licence caused by engaging in a competitive process would threaten public health and safety or the environment, and/or create a serious financial or other risk to the department
- the licence provides a service to the applicant or provides a benefit to the community of New South Wales
- the licence is of a unique nature and/or the proponent is the only person who can feasibility use the Crown land for the purpose
- direct negotiation in respect to a licence to use Crown land will normally be approved where the licence is of low value and does not provide a value-for-money return if granted via the competitive process.

The department may decide to proceed with a competitive process even though direct negotiation may be allowable under one or more of the above categories. Such a decision will only be made where an overarching, exceptional circumstance exists.

Licences that do not meet the above direct negotiation categories will be granted via a competitive process. This will be undertaken through a closed or open competitive process depending on the purpose, value and nature of the licence application.

Community engagement strategy

Crown land is used by the community for a wide range of activities and purposes. The *Community Engagement Strategy* ensures that decisions about Crown land are made in an open and transparent way by setting out engagement requirements for particular dealings, such as licences.

In considering licence applications, the department must follow the requirements of the *Community Engagement Strategy* and may be required to consult and engage with the community on the proposed application. Depending on the outcome of any engagement of consultation, the licence application may be altered or refused.

Notification of the grant of a licence will be published on the department's website in accordance with the *Community Engagement Strategy*.

Outcome of assessment

The department receives a large volume of licence applications. The time taken to assess an application is dependent upon its complexity and the total number of applications being assessed by the department at the time. It is usual for the processing and assessment of a licence application to take a number of months. The department will advise all parties who lodge an application, or express an interest in a licence through a competitive process, of the outcome in writing.

If you are successful in your application, the department will issue you with a licence offer for consideration. The licence offer will detail the terms and conditions of the licence, the annual rent payable and the term of the licence. To accept the licence offer, the licence document must be signed by all licensees or authorised signatories, witnessed (where required) and returned to the department for execution. Acceptance of the licence offer does not constitute the grant of a licence. The licence is granted upon formal execution by the department.

Where the licensee is a company, the licence offer must be signed in accordance with Section 127 of the *Corporations Act 2001*, by:

- two appointed directors of the company, or
- an appointed director and a company secretary of the company, or
- for a proprietary company that has a sole director who is also the sole company secretary, that director.

A company seal may also be affixed to the licence document.

For licences granted in accordance with Section 2.18, notification of the licence must be published by the department prior to the grant of the licence. This notification will be published in the NSW Government Gazette.

Terms and conditions

All licences are subject to terms and conditions that will outline the licensee's duties and responsibilities in respect to the land. The licence may also contain special conditions which relate to the specific purpose of the licence. All licensees are expected to comply with their licence conditions. Compliance action will be undertaken if the licensee does not comply with the licence terms and conditions.

Rent

Licences are subject to the payment of an annual rent for the year in advance. The rent is determined on a market value basis or by using a methodology approved by the Independent Pricing and Regulatory Tribunal. The rent is normally adjusted by inflation (through the Consumer Price Index) each year and redetermined on a regular basis (usually every three to five years).

Licensees may be eligible for a concession for their annual rent. For further information about financial concessions and eligibility, please refer to the Financial Concessions Policy and supporting guidelines.

Please note that most licences are classified as rateable land under the *Local Government Act 1993* and therefore licensees will be required to pay rates to council.

Term

Licences (except for extractive industry, domestic waterfront, communication or short-term licences) will generally have an indefinite term. If a licence has a term, the licensee does not have an automatic right to renewal and the licensee must apply for a new licence prior to expiration to continue occupation. No guarantee can be given that a new licence will be granted and in some instances application for a new licence may be undertaken by a competitive process.

Transfer

Under Section 5.27 of the *Crown Land Management Act 2016*, licences that provide a benefit to freehold or leasehold land will automatically transfer when the benefitting land is sold or reassigned. For example, a licence for a pump site and pipeline that supplies water to a farm will automatically transfer when the farm is sold. Please see the [Automatic Licence Transfer Guidelines](#) for further information on determining if your licence will automatically transfer.

If a licence does not automatically transfer, you must lodge a [Revocation of Existing Tenure and Issue of a New Licence Application form](#) to request the existing licence be terminated and a new licence granted to the new party. This form must be signed by the outgoing and incoming parties and submitted to the department with the fee and any supporting documentation listed on the application form.

Alteration

A licensee can request an alteration to their licence in some circumstances. An alteration will only be allowable where the proposed alteration relates to:

- a reduction in the area of the licence
- the removal of a purpose specified in the licence
- the addition of a purpose to the licence that has no greater impact or usage on the land
- the addition or removal of a term or condition of the licence, provided the action has no greater impact or usage on the land.

An application fee is payable when submitting an application for a licence alteration. Where proposed changes fail to meet the above criteria, you must submit an application for a new licence.

Termination

Licences can be terminated at any time by the department or will be considered by the department upon the request of the licensee. Reasons that the department will terminate a licence include:

- the licensee has failed to comply with the conditions of the licence
- the land under licence has been sold or compulsorily acquired
- a native title consent determination, Aboriginal land claim, Aboriginal land agreement or Indigenous land use agreement has been made or granted over the land.

A licensee may also apply to terminate their licence by submitting a [Licence: Termination Statutory Declaration form](#). Please note that a licence may not be terminated until any outstanding amounts on the licence are paid in full and the licence area is restored to its former condition as required, including the removal of any structures on the land. In most cases, the licensee will also be required to fence the Crown land from any adjoining land. A field inspection may also be undertaken to ensure that all requirements have been met prior to termination.

Definitions

Table 1. Terms and definitions

Word	Meaning
application	A request to licence Crown land for the proponent
benefit	Freehold or leasehold land which is benefitted by or from the presence of a Crown land licence
CLMA	<i>Crown Land Management Act 2016</i>
competitive process	A transparent process by which competing proponents apply to secure Crown land with full knowledge of the scope and specifications of the proposal, including the terms and conditions of any proposed sale, lease or licence, and the criteria by which the department will evaluate the applications received
Crown land	Land defined as such in section 1.7 of the CLMA and Crown road as defined under the <i>Roads Act 1993</i>
direct negotiation	Negotiating directly with one proponent and not via competitive process
freehold	Land held under freehold title (or as fee simple)
leasehold	Crown land held under a Crown lease or a weekly tenancy arrangement with the department. Leasehold does not include rental tenancies of freehold land or the subleasing or sublicensing of a Crown lease
licensee	The person or entity to whom Crown land is licensed. May alternatively be referred to as a holder.
the department	NSW Department of Industry—Lands and Water

Related documents

- *Crown Land Management Act 2016*
- *Aboriginal Land Rights Act 1983*
- *Native Title Act 1993*
- *Environmental Planning and Assessment Act 1979*
- Licensing of Crown land Policy
- Crown Land Financial Concessions Policy
- Automatic licence transfer—guidelines
- Domestic waterfront licences—guidelines.